

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Billed Party Preference for O+)
Calls)

CC Docket No. 92-77

CompTel's Proposed Rate Ceiling)
on Operator Service Calls)

DOCKET FILE COPY ORIGINAL

and)

Petition for Rulemaking of)
National Association of Attorneys)
General Regarding Additional)
Disclosures by Some Operator)
Service Providers)

RM-8606

REPLY COMMENTS OF
AMERICA'S CARRIERS TELECOMMUNICATIONS ASSOCIATION

The America's Carriers Telecommunications Association (hereafter "ACTA"), by its attorney, hereby submits Reply Comments addressing the Comments that were filed in the above-captioned proceedings on April 12, 1995 in response to the FCC's Public Notice DA 95-473. ACTA is a national trade association established in 1985 to represent the interests of independently owned and operated interexchange carriers and operator service providers. ACTA works to advance and maintain competitively supplied telecommunications services, at reasonable charges, for all consumers.

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ACTA has reviewed the comments that have been filed on the proposals contained in the joint ex parte filing of the Competitive Telecommunications Association ("CompTel"), Bell Atlantic, NYNEX, BellSouth, US West, the American Public Communications Council ("APCC"), MFS Communications Company, Inc., and Teleport Communications Group. The CompTel proposal seeks to avoid a potential decision by the FCC implementing Billed Party Preference ("BPP") by substituting instead a rate ceiling for all operator service calls, combined with an enforcement system that relies in the first instance on local exchange carriers monitoring operator service rates and providing periodic reports to the FCC on those providers that charge more than the "benchmark" rates as proposed by CompTel. CompTel has characterized its proposal as a "simple" approach that will more effectively deal with the "statistically small number of cases" in which callers are charged excessive rates for operator assisted calls. CompTel argues, both in the ex parte filing and its Supplemental Comments filed on April 12th, that the rate cap that it proposes is "fair", and that its proposal avoids significant regulatory involvement in the competitive marketplace. ACTA supports the efforts of CompTel to ensure that the interests of consumers, operator service providers, and all participants in the operator services marketplace are served by any new action that may be taken by the FCC in this docket. Like CompTel, ACTA previously has filed comments in this docket that assert that the record compiled to date is insufficient to support an agency finding that BPP will serve the public interest. However, the comments filed on April 12th addressing CompTel's proposed alternative to BPP reveal that many industry participants simply do not agree that the solution as proposed by CompTel is "simple", "fair", or "deregulatory." ACTA therefore is concerned that if CompTel's proposal, once implemented, will not meet these laudable goals, the proposal

requires further consideration as to how best to fashion a final approach that will be in the public interest.¹

**Commentors Have Disputed CompTel's Claim
that the Proposed Rate Cap is Simple and Fair**

CompTel's rate cap proposal is presented as a simple solution within the FCC's statutory authority to adopt that is fair to all competitors in the operator services marketplace. Not all competitors agree with these assertions. It has been pointed out that because the rate caps as proposed do not consider the costs of operator service providers in determining the rate ceiling, they may be in violation of The Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"), as well as Section 201 of the Communications Act. See Comments of One Call Communications, Inc. d/b/a Opticom, at 6-9. These same comments also question the validity of the proposal under Section 205 of the Act, which requires that rates be carrier-initiated. *Id.* at 9, citing AT&T v. FCC, 487 F.2d 864, 872 (2d Cir. 1973); see also Comments of Capital Network Systems, Inc., at 4.

Further, CompTel's "simple" rate ceiling is perhaps too "simple", as it fails to address numerous issues that are essential to proper implementation. For example, CompTel does not discuss how and when the ceiling will be periodically reviewed and adjusted to account for inflation and other exogenous cost factors, and how specific events, such as new access charges, will affect the dollar amounts of the rate ceiling. See, e.g., Comments of One Call

¹ For example, commentors have pointed out that CompTel's rate ceiling approach, like BPP, simply is not necessary at this time. That is a critical point which must be recognized. If statutes, regulations, and procedures already exist which, if appropriately enforced, can effectively address any problems and issues that might arise in the operator services marketplace, then imposition of a rate cap, no matter how "simple," is not warranted.

Communications at 12-13; Operator Service Company at 4. Similarly, in proposing rate caps for only some of the many types of operator assisted calls, CompTel does not address how non-traditional services that may be provided by OSPs are to be handled. See, Comments of Operator Service Company; U.S. Osiris Corporation; One Call Communications, Inc.

Moreover, many commentators have disputed CompTel's characterization of the specific rate caps as "fair". The proposed caps are "based" on a "random sampling" of FCC complaints as supplied by the FCC's Enforcement Division, an "informal survey" of CompTel members, and CompTel's review of the guidelines that were used by the FCC in 1991 to review OSP informational tariffs. Admittedly, therefore, the sample was not statistically valid, and all OSPs' costs and input were not considered, yet all OSPs will be forced to conform to the rate caps. See Comments of Capital Network Systems at 9; AT&T Comments at 4.

It does not seem then that the caps as proposed can be considered "fair" in all cases. To the contrary, adoption of the proposal could embroil the FCC in numerous challenges to the overall validity of the caps, as well as to the specific rates adopted for the specific services. As discussed below, such new and protracted regulatory proceedings are neither desirable nor necessary.

ACTA must agree also with those parties that question the LEC initiated monitoring and reporting procedures as proposed. The anticompetitive possibilities of a system that vests authority in the LECs to report to the FCC violations by individual OSPs, when those same LECs provide operator services in competition with OSPs, are obvious. Moreover, as not all OSPs use LEC billing, the monitoring and reporting would be incomplete and inaccurate.

**Existing Laws and Regulations Are More Than
Adequate to Address Any Abuses in the Competitive Marketplace**

ACTA does not deny that pricing issues and other marketplace activity by OSPs exist. However, such instances are "statistically small" in number. ACTA, therefore, urges the Commission to seriously consider the wisdom of adopting a whole new system of rate regulation to address a sporadic number of problems.

AT&T argues persuasively (Comments, page 3) that "the Commission already has all of the power it needs to monitor and, if necessary, limit or prescribe OSP rates Thus, no additional regulatory mechanisms are necessary to enable the Commission to oversee OSPs' rates." AT&T also argues that, rather than expending its resources to implement a new system of regulation, the "Commission's limited resources should be directed to the enforcement of these existing rules" *Id.* at 4.

ACTA agrees. The FCC has the authority and the procedures already in place in both TOCSIA and Title II of the Act to take enforcement action against individual OSPs when required. Moreover, the ability of the competitive marketplace itself to take care of abuses by individual OSPs cannot be discounted. In short, there has been no persuasive showing made in the comments that have been filed that the whole OSP industry needs to be burdened with a new form of rate regulation and new reporting requirements simply to police a few individual players.²

² As pointed out by several of the commentators, even if CompTel's proposal is adopted those same "bad actors" are not likely to comply with the rate caps that are imposed, and therefore the need for individualized enforcement action by the FCC would not even be obviated by CompTel's proposal.

Conclusion

In its Reply Comments filed on September 14, 1994 on the Billed Party Preference proposal, ACTA suggested a variety of actions that the FCC could take that would be far more effective than BPP in protecting consumers and ensuring a fully competitive operator services industry. Those same suggestions apply equally herein, and therefore are worth repeating. Rather than adopting a rate cap proposal and monitoring and reporting mechanism that is fraught with problems from the outset, the Commission would be far better off taking the following types of steps:

- ▶ Revisit and adopt fairer and more competitively equitable calling card validation procedures and requirements;
- ▶ Intensify existing enforcement efforts under TOCSIA and the Act to address and cure any specific instances of excessive practices;
- ▶ Expand programs for consumer awareness and work with industry representatives, like ACTA, to adopt codes of conduct for their memberships;
- ▶ Concentrate resources on improving the infrastructure and eliminating artificial barriers to more effective competition by which consumers will truly obtain more responsive services at reasonable costs.

The majority of commentors in this proceeding already have recognized that BPP is a solution looking for a problem. That same adage also can be applied to the proposed rate cap.

It not only is unnecessary to deal with problems in the marketplace, but it could create far more problems than it will solve.

Respectfully submitted,

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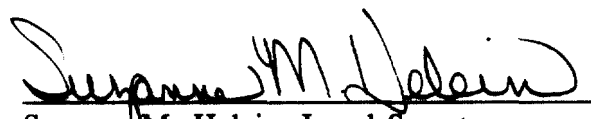
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CERTIFICATE OF SERVICE

I, Suzanne M. Helein, a secretary in the law offices of Helein & Waysdorf, P.C., do hereby state and affirm that copies of the "Reply Comments of America's Carriers Telecommunications Association," in CC Docket 92-77, were served via first class mail, postage prepaid, unless otherwise noted, this 27th day of April, 1995, on the following:

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